Supreme Court, U.S.
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No. 96-1261

In The

Supreme Court of the United States

October Term, 1996

ATLANTIC COAST LIFE INS. CO. and ATLANTIC COAST LIFE INS. CO. EMPLOYEE BENEFIT PLAN,

Petitioners,

v.

PAYDEN SHAW and JUANITA SHAW,

Respondents.

On Petition For Writ Of Certiorari To The South Carolina Court Of Appeals

MEMORANDUM IN OPPOSITION

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QUESTION PRESENTED FOR REVIEW

When a state court exercises concurrent jurisdiction to resolve a claim for benefits due under ERISA, 29 U.S.C. § 1132(a)(1)(B), may it apply state rather than federal procedural rules to determine whether such claims should be tried to a jury?

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MEMORANDUM IN OPPOSITION

The Court should deny Petitioners' Writ of Certiorari to review the judgment and opinion of the South Carolina Court of Appeals, entered in the above-entitled proceeding on March 18, 1996.

STATEMENT OF THE CASE

The Respondents filed a Complaint against Petitioners, the employer and its employee welfare benefit plan asking for a judgment against them in the sum of $50,000.00 for medical bills the Respondent's wife Juanita Shaw incurred while Payden Shaw was an employee of Atlantic Coast Life Insurance Company. The Respondents' Complaint alleges a breach of contract between the Respondents and the Petitioners because the Petitioners have failed to make payment for these medical expenses. The Respondents' Complaint contained on the front page the following request: "Jury Trial Demanded". The Employer answered and pursuant to an order of the Georgetown County Court of Common Pleas, Georgetown, SC, the Respondents amended their Complaint to include the Employee Benefit Plan. On January 6, 1995, long after the Complaint was filed, but only a few weeks prior to the scheduled trial in this matter, the Petitioners moved for an Order transferring the case to the non-jury roster. This motion was denied, and this appeal followed.

The appeal was heard by the South Carolina Court of Appeals on January 9, 1996. On March 18, 1996, that Court filed its published opinion reported at 470 S.E. 2d 382 (S.C. 1996) which affirmed the lower court's ruling

that Respondents were entitled to a jury trial. The Petitioners filed a Petition for Rehearing which was denied by the South Carolina Court of Appeals on May 23, 1996. A Writ of Certiorari by Petitioners to the Supreme Court of South Carolina was also denied on November 8, 1996.

REASONS FOR DENYING THE WRIT

I. There is no conflict between the South Carolina Court of Appeals' opinion and decisions of this Court, federal courts and other state courts.

The South Carolina Court of Appeals correctly found that the State's own procedural rules as to jury trials prevail in a state action to enforce rights under ERISA. Subsection 1132(e)(1) of ERISA specifically confers concurrent jurisdiction upon both state and federal courts for claims brought under 29 U.S.C. Subsection 1132(a)(1)(B).

This Court in *Howlett v. Rose*, 496 U.S. 356, 110 S.Ct. 2430, 110 L.Ed. 2d 332 (1990), held that federal law is enforceable in state courts based on the supremacy clause which makes these laws "the Supreme Law of the Land," and charges state courts with coordinate responsibility to enforce those laws according to their regular modes of procedure. In this regard, "the general rule, 'bottomed deeply in belief in the importance of state control of state judicial procedure, is that federal law takes the state courts as it finds them.' " *Id.* at 372. "States thus have great latitude to establish the structure and jurisdiction of their own courts." *Id., Herb v. Pitcairn*, 324 U.S. 117, 65 S.Ct. 459, 89 L.Ed. 789 (1945). *Minneapolis & St. Louis R.*

Co. v. Bombolis, 241 U.S. 211, 36 S.Ct. 595, 60 L.Ed. 961 (1916) and *Missouri v. Lewis,* 101 U.S. 22 (1879).

Moreover, according to the principles enunciated in *Erie R. Co. v. Tompkins,* 304 U.S. 64 (1938), the state guarantee of the right to a jury trial is a procedural rather than a substantive matter. *Byrd v. Blue Ridge Rural Elec. Corp.,* 356 U.S. 525, 78 S.Ct. 893 (1958). Indeed, the Seventh Amendment guarantees the right to jury trial in federal court, but this guarantee does not apply in state courts. *Gasperini v. Center for Humanities,* 116 S.Ct. 2211 (1996).

Thus, the *Terry* test,[1] which petitioner discusses at great length in its petition, is simply not applicable here. The lower court made its decision based on state procedural law when it ruled that a jury trial is appropriate in an ERISA action brought in the courts of South Carolina. This court does not have jurisdiction to review by certiorari such a determination. The South Carolina Court of Appeals correctly found that despite its ERISA label this case is a suit for breach of contract in which the respondents were seeking money damages. Therefore, pursuant to South Carolina law,[2] this case is an action at law with questions of fact triable before a jury.

It is significant that petitioners concede ERISA does not contain any express provision either allowing or forbidding jury trials. (Petition for Writ of Certiorari at 8.) Presumably, petitioners' point is that ERISA, by allegedly creating only an equitable remedy, implicitly forbids a

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[1] *Chauffeurs, Teamsters and Helpers, Local No. 391 v. Terry,* 494 U.S. 558 (1990).

[2] South Carolina Rules of Civil Procedure 38 (1995).

jury trial. This Court has not yet decided whether, either under the Seventh Amendment or as a matter of statutory construction, there is a right to jury trial even when an ERISA claim is tried in federal court. Indeed, both Petitioners and Respondents acknowledge the lower federal district courts are in conflict as to this very question. Surely that question should be decided first, in an appropriate case, before the Court undertakes to decide whether, if Congress did not intend to allow jury trials in federal court ERISA cases, it also intended to require states to disregard their own procedural rules allowing jury trials and follow federal law.

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Petitioners base their request for review on the proposition that there is substantial conflict on the question presented among the state and federal courts. (Petition for Writ of Certiorari at 14-20.) This contention, however, is based on the incorrect assumption that, when a state court decides to allow a jury trial in an ERISA case, the state courts are making a decision on the same question of federal law that a federal court must resolve in order to decide whether to allow a jury trial. In fact, however, a federal court makes this decision based on its interpretation of the Seventh Amendment, and its application of this Court's analysis in *Chauffeurs, Teamsters & Helpers Local No. 391 v. Terry*, 494 U.S. 558 (1990) of the Seventh Amendment right to jury trial to the forms of action and relief provided by ERISA. In contrast, a state court makes its decision about whether to allow a jury trial based on state law and the procedural doctrines that govern this question.

Thus, there is no conflict between the state courts and the federal courts, because a federal district or appellate court is never in a position to address the question of whether jury trials are available in state courts. Moreover, although there may be different outcomes in the courts in various states, that is not because there is a conflict on any question of law but because, under principles of federalism, the various states are entitled to have different rules of state law on such matters as whether to have trial by judge or by jury. If there is any federal law question involved in such cases, it is whether Congress, in passing ERISA, intended to insist that states not try such cases to juries and whether the Constitution allows Congress to insist on such a procedure in the state courts. Out of the twelve state cases cited by Petitioners, only two actually addressed the question of whether state courts can apply their own procedural rules as to jury trials. Those two cases held a state could apply its own procedural rules as to the right to a jury trial under ERISA. (Petition for Writ of Certiorari at 16-17.)

It is only at the end of their petition (Petition for Writ of Certiorari at 20-22) that, in less than two full pages, petitioners directly address the federal question that is involved here – whether state courts are obligated to apply the federal standards under the Seventh Amendment in deciding whether to provide jury trials in ERISA cases. In that regard, Petitioners do not cite a single state or federal court case addressing that question. Petitioners simply assume that the right to jury trial (or, more specifically, the supposed lack of such a right) is a substantive matter on which Congress has decreed a rule for state as

well as federal courts despite the lack of any statutory authority.

In *Dice v. Akron Canton & Youngstown R. Co.*, 342 U.S. 359 (1952) the Supreme Court held that the state of Ohio could not apply its own rules to determine which questions were legal, and which were factual in order to take from the jury a key question in an action brought under the Federal Employers Liability Act. Significantly, a long line of decisions held not only that there was a right to a jury trial in FELA cases, but also that the right to a jury trial was a fundamental part of the remedy provided for railway workers under the FELA. Moreover, this Court appeared to acknowledge that, had Ohio denied jury trials for negligence actions generally, the question of whether the federal right to trial by jury would supersede the state procedural rule would be quite different. In the instant case, this Court has never decided whether there is a right to trial by jury in federal court under ERISA, and South Carolina has simply applied its own state procedural rule that contractual actions are comparable to a claim for ERISA benefits and can be tried to a jury. Accordingly, the decision below is wholly consistent with *Dice*, and this Petition should be denied.

CONCLUSION

For these various reasons, it is respectfully urged that the Petition for Writ of Certiorari be denied.

Respectfully submitted,

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